

The 21st November, 1978

No. 11(112)3Lab-78/10074.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s Hindustan Prestressed Concrete Structure (P.) Ltd., Faridabad.

BEFORE SHRI NATHU RAM SHARMA, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK.

Reference No. 33 of 1977

between

THE WORKMEN (LIST ENCLOSED) AND THE MANAGEMENT OF M/S HINDUSTAN
PRESTRESSED CONCRETE STRUCTURE (P) LTD., FARIDABAD

Present.—

Shri Bhim Singh Yadav, for the workmen.

Shri R. C. Sharma, for the management.

AWARD

By order No. ID/FD/286-A-77/21958, dated the 4th June, 1977 the Governor of Haryana referred the following dispute between the management of M/s Hindustan Prestressed Concrete Structure (P) Ltd., Faridabad and its workmen (list enclosed), to this Court for adjudication in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of the workmen as per list enclosed was justified and in order?
If not, to what relief are they entitled ?

On receipt of the order of reference notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties the following issues were framed by my learned predecessor on 21st September, 1977 :—

- (1) Whether each one of Shri Shyam Lal and others and Shri Ashok Kumar was in the employment of the management concerned as a workman on the date of the alleged termination of his services by them ?
- (2) Whether the reference is bad in law as being belated and politically motivated ?
- (3) In case of proof of issue No. 1 and non-proof of issue No. 2, whether the termination of services of the workmen as per list enclosed was justified and in order ? If not, to what relief are they entitled ?

The case was fixed for the evidence of the workmen. The workmen examined Shri Hari Shankar Khushwa, workman, as WW-1, Shri Shatru Ghan Singh as WW-2, Shri Ghisha Singh as WW-3, Shri Kishan Lal, clerk of the management, as WW-4 and Shri Dhyan Singh, Manager, E.S.I. branch, as WW-5 and Shri Bhim Singh as WW-6 and closed his case. Then the case was fixed for the evidence of the management. The management examined Shri B. R. Nagia, Labour Officer, MW-1, Shri Kirpa Ram Saluja, Managing Director of the management, as MW-2, Shri H.L. Basin, partner of Vijay Construction Co., as MW-3, Shri N. L. Anand as MW-4, Shri Krishan Lal, Incharge of Deepak Construction Co., as MW-5 and closed their case. Then the case was fixed for arguments. Arguments have been heard at length. Both the parties have proved documents also. The evidence of the parties consists of oral statement and documents.

I have gone through the entire evidence oral as well as documentary. I now give my findings issue-wise :

Issue No. 1. WW-1 stated that he was an employee of the management since the year 1961 and the management terminated his services on 29th March, 1976, illegally without holding any enquiry and he was receiving Rs. 190 per mensem as wages on the date of termination of his services including all allowances. He stated that he was not supplied any appointment letter, nor duty card. He produced a photostat copy of E. S. I. card Exhibit W-1. He further stated that he was residing in the residential quarter within the premises of the factory and the management paid electric charges and water charges. He also tendered Money Order Coupons. He further stated that all the workmen, whose services were terminated continued going to the gate of the factory for three long months continuously. There is a demand notice. He further stated that when they formed a union and raised a demand for bonus, their services were terminated. In cross-examination he stated that he was going on leave after sanction by the management but he stated that he did not keep any copy of any application. He

also stated that the management deducted E.S.I. contribution from the wages of the workman and he never worked on the construction of the bridge in Delhi during 1976-77. He further stated that he has lost E. S. I. medical certificate given to him from time to time by the E. S. I. authorities. He denied that ever E. S. I. benefits were paid to him, as he never fell ill for more than 3 or 4 days. He denied that he had worked with M/s. Deepak Construction Co. and M/s. Vijay Construction Co. He denied his knowledge regarding closure notice by M/s. Vijay Construction Co. and Deepak Construction Co. He named his union as Congress Committee formed by Shri Bhim Singh Yadav as President. He stated that Sarvshri Nand Lal Cashier, Krishan Lal Time Keeper of the management were making payment of the wages. Similar is the statement of WW-2. In cross-examination WW-2 stated that there were 40 workmen including the clerks on the rolls of the management and Shri Subhash, Cashier of the management used to make the payment of wages. He denied a suggestion that he designated him self as an employee of the management because of the sign board in their name and style outside the factory. He further stated that he never received treatment from the E. S. I. Dispensary. He further stated that he never retained the copy of the application made by him for grant of leave. Similar is the statement of WW-3. He further stated that he was ousted forcibly from the residential quarter with the help of police and that the management terminated his services on account of trade union activities. He also tendered in evidence Money Order Coupons and letters showing his address within the premises of management's factory. He also stated that S/ Shri Shyam Lal, Sadhu and Idu deceased were employees of the management as Chowkidars. In cross-examination he stated that he was ousted from the residential quarter before 1st April, 1976 and the management continued their absence even after termination of his services. He gave the names of the employees of the management numbering about 15. WW-4 Shri Kishan Lal stated no appointment letter summoned by the applicant were in possession of the management. He stated that he was an employee of M/s. Deepak Construction Co. from 1969 to 1976 and that the work of M/s. Deepak Construction Co. carried on within the premises of the management. Shri Saluja was the partner of M/s. Deepak Construction Co. Shri Vijay brother of Shri Saluja used to visit the factory. He further stated that he did not issue any appointment letter to any employee of M/s. Vijay Construction Co. He did not remember the name of the employees of M/s. Deepak Construction Co. in the year 1974 but he stated that he can identify them and the Co. had no watchman of their own. In cross-examination he stated that the workman were employees of M/s. Deepak Construction Co. and he paid their wages. M/s. Deepak Construction Co. closed their business and issued notices to their employees including him. He proved notice Exhibit M-X. WW-5 Manager E. S. I. branch stated that Code number 6604 was allotted to the management and they paid their contribution to the E. S. I. This number was allotted to them on 27th December, 1967. He stated that the management concerned sent them proformas duly filled relating to E. S. I. deduction of Sarvshri Hari Shankar, Shiv Parshad, Shatrughan Singh and Babu Lal etc., with insurance number as mentioned against each one of them. In cross-examination he admitted that insurance number of the workman remained the same even after his transfer from one management to the other. He did not bring the original proforma with him but brought attested copies of the original. He stated that the original must be bearing the signatures of the employees at the relevant place. Contributions remitted through his office by the employer every six months with details of the amount. He did not bring this returns. He tendered attested copies of the forms sent by the employer. WW-6 Shri Bhim Singh Yadav stated that he was a member of the working committee of I.N.T.U.C. since 1965 and General Secretary of District General Engineering Employees Union, Gurgaon. The workmen approached him in February, 1976 for becoming the member of the union telling him that the management did not satisfy their demand relating to payment of wages etc. They were enrolled members. He had sent a demand notice to the management through registered post copy is Exhibit W-X, postal receipt Ex. W-X/A. He heard nothing from the management than formerly demand notice Exhibit W-X 3. Postal receipt relating there to is Exhibit W-X/C. He further stated that the management terminated the services of Sarvshri Hari Shankar, Kunj Bihari and Israili workmen in order to victimise them for trade union activities. They made a complaint to the Labour Officer, thereafter the management terminated the services of others. In cross-examination he admitted that no demand notice was served on the management by the workmen relating to their reinstatement prior to service on the management of the notice of demand Exhibit W-X/E, although correspondence proceeded. Shri Ashok Kumar served a notice of demand dated 5th May, 1976 in his individual capacity which resulted in a reference No. 33 of 1977. The notice of demand dated the 25th March, 1976 relates to General Demands and not to reinstatement. MW-1 Shri B. R. Nagia, Labour Officer stated that the workman had served a notice of demand dated the 25th March, 1976. He produced a copy of the report made by him as Conciliation Officer on that demand which is Exhibit M-1. The Government declined to make a reference vide their letter received in his office on 11th July, 1976. He also sent a report on notice of demand dated the 2nd February, 1977. The copy of the report is Exhibit M-2. He stated that the copy is correct. He also stated that he visited the premises of the factory of the management before submission of the report copy thereof is Exhibit M-1. He did not find the factory running. He received letter Exhibit M-3 from M/s. Deepak Construction Co. Letter, copy whereof is Exhibit W-X/F, from Shri Bhim Singh Yadav is unsigned. Shri Kirpa Ram Saluja Managing Director of the management stated that they took this factory in 1964 and started running it from 1968. He produced article of association Exhibit M-1. He also produced copies of balance sheet with audit's report Exhibit M-2 to M-6. They manufactured prestressed poles. They got them manufactured from their contractors. He also proved minutes of the meeting of the Board of Directors Exhibit M-7 to Exhibit M-9. He also produced bills, Cash Books, Ledgers and copies Exhibit M-10 to Exhibit M-47. The bills relate to the payment made to the Contractor named M/s. Vijay Construction Co. upto 31st March, 1972 and M/s. Deepak Construction Co. from 1st April, 1972. M/s. Deepak Construction Co. got the contract from manufacturing poles for them as per resolution of the Board of Directors. The poles were manufactured in their premises. The employees were of the Contractors. They had no employees except one or two at their head office in Delhi. They made payments to E. S. I. details given in Exhibit M-48. He stated that this payment were debited to the contractor. As there

were no orders with them for supply of poles, they placed no order for manufacturing poles on M/s. Deepak Construction Co., their contractor therefore, M/s. Deepak Construction Co. closed their work. They gave notice Exhibit M-49. He further stated that they used to pay different rates for different sizes of poles. In cross-examination, he gave the name of their contractors. M/s. Vijay Construction Co. had head office at Calcutta and branch office at Delhi. Shri Vijay Saluja was his son and not Deepak but Deepak was his grand son 12 years old. These contractors used to work on labour rates. Material was supplied by them. E. S. I. scheme applied to them in the year 1968. No employee of theirs used to look after the manufacturing work except the contractor. The contractor was making payments in their presence. He never signed any payments made to the workers. He admitted that the labour of the contractor used to reside in the quarters within the premises of the factory and electricity charges were borne by them. He did not know regarding the payment of bonus by the contractor. The Contractor had to comply the orders given by them and if they did not give orders the, contractors had nothing to do and the Government did not give orders in 1976. MW-6 Shri S. L. Basin stated that he was supervising the work of M/s. Vijay Construction Co. and he was maintaining the attendance register and payment of wages register of the workman who were working there. Shri Sadhu Ram, Baij Nath, Ram Mohan, Shiv Parshad, Shiv Shankar, Shatru Ghan Ram Sarup were working with him in 1974 and 1975 and they had received wages after signing the receipt of wages. He had brought the record. He further stated that the workman left attending work in April, 1976. M/s. Vijay Construction Co. was the transport contractor for the management. The workman concerned never worked on transport. In cross-examination he could not tell whether M/s. Vijay Construction Co. was registered under Abolition of Contract Act. He named the drivers of the trucks as Sarvshri Satvinder Singh, Sant Ram, Hira Mani and another. The driver and some others used to remain with the management such as Chowkidar, supervisors. He had not brought the record of drivers as he looked after the work of the contractor of work under bridge. He further stated that their contract of transport with the management came to an end in the April, 1976. He did not know the workman remaining the management. Other partners were looking after their work. He denied a suggestion that Shri Ghisa Singh Chowkidar was an employee of the management and not of theirs. MW-4 Shri N. L. Anand stated that he was Incharge of work at Saharanpur of M/s. Vijay Construction Co. Sarvshri Anil Kumar Babu Lal, Parmeshwar were at Saharanpur under him. He had brought the payment of wages slips which the workmen had signed on revenue stamps in proof of receipt of wages. In cross-examination he stated that he never looked after any work of the management but looked after the work of M/s. Vijay Construction Co. He further stated that he was doing writing work of M/s. Vijay Construction Co. Than MW-5 Shri Kishan Lal Incharge of M/s. Deepak Construction Co. appeared as MW-5 who brought attendance register as well as payment of wages register since 1973 and had prepared extracts from the records. He stated that Shri Shyam Lal is working since October, 1973. Shri Sarju Keshri since July, 1975. Israili since April, 1972, Kalu Khan since April, 1972, Hari Chand since December, 1975, Kunj Bihari since August, 1975. Ram Narain, Mohinder Singh, Nar Singh, Ram Kirpal since April, 1972. Kalu Singh in January, 1974. Ashok Kumar since November, 1975 but Ashok Kumar left service on 20th January, 1976. Shri Ghisha Singh in Vijay Construction Co. since April, 1972. E. S. I. contribution were not deducted from their pay from any of their workmen. The management did not receive any order for work, they told M/s. Deepak Construction Co. to stop work for that reason and than they stopped work. His services was also terminated. He proved Exhibit M-49 which reveals the names of the persons in their employment on that date. In cross-examination he stated that M/s. Vijay Construction Co. had a Chowkidar as they had trucks. They had drivers also numbering three to four. The notice was displayed by M/s. Deepak Construction Co. that they had no work. He further stated that in cross-examination that there were Jhuggies within the premises of the management wherein the workmen were living. Ex-M-1 is a letter from Conciliation Officer to the Labour Commissioner. This corroborated the stand of the management that the workmen were not their employees and that the management had closed their work. Ex. M-2 is another letter from Conciliation Officer to the Labour Commissioner copies to the management and the workmen together with Conciliation Proceedings. Conciliation proceedings read that formerly this very demand was rejected by the Government and no reference made. The Conciliation proceedings proved that the stand of the management is consistent from the very beginning. Exhibit M-3 is a letter of M/s. Deepak Construction Co. to the Conciliation Officer informing him that these workmen were their employees at the time of closure of their business. The name of the workmen are given in Exhibit M-3/A sent to the Conciliation Officer together with Exhibit M-3. They are 22 in number and are disputants. Exhibit W-5 is a letter from the General Secretary of the workers union to the Conciliation Officer. Exhibit W-X is also a letter from the General Secretary of the workers union to the management. Exhibit W-X/B is a copy of general demand notice. There are several other documents also such as W-X/F, W-X/G, W-X/H, W-X/I, Exhibit W-5/1 to Exhibit W-12 are copies of declaration forms relating to E. S. I. Corporation. They are still vacant, not full copies of the original as same portion of them is still vacant. In Exhibit W-5/4 Babu Lal's address has been given as Tajpuri Badarpur whereas the address of Sarvshri Hari Shankar, Shiv Parshad, Shatrughan, Parmeshwar, Ram Lal, Rameshwar Singh Kishan Singh, Parbhati, Maghai Singh, Sodagar Singh c/o Shivagara Singh has been shown as c/o the management. These forms do not help the workman as it is an admitted fact that they were residing in Jhuggies or quarters within the premises of the management. By living in the quarters within the premises of the management, the workman do not become the employee of the management, another fact which is proved is this that M/s. Deepak Construction Co. etc. the contractor were also doing their work in the premises of the management. There are some letters and Money Orders coupons in which the address of some workmen has been given as c/o the management. The value of this evidence is also the same that the workman were receiving their letters and Money orders at their quarters within the premises of the management. This is no proof of relation of Master and Servant. Then there are records of M/s. Vijay Construction Co. regarding payment of wages to these workmen. All these workmen

have signed or thumb-marked the receipt of wages on revenue stamps pertaining to Uttar Pradesh. This clearly proves that these workmen were working at Saharanpur in Uttar Pradesh. The representative for the workman did not put a single question in cross-examination that these records of payment of wages do not belong to M/s Vijay Construction Co. and belong to the management. Rather in the heading the name of M/s Vijay Construction Co. at Saharanpur has been given and the months of wages is also given. It proves that these workmen whose names appear in this paysheets have received wages from M/s Vijay Construction Co. Ex. M-1 is article of association of the management but it has nothing to do with the dispute. Ex. M-7 is the copy of resolution of the Board of Directors of the management which witnesses that the Board of Directors had resolved to give contract to M/s Vijay Construction Co. and M/s Deepak Construction Co. for manufacturing of poles. It is mentioned in resolution No. 3 passed on 24th January, 1972. Resolution No. 2 of 19th February, 1972 also speaks regarding rates fixed for poles with contractors M/s Deepak Construction Co. Similar is the resolution No. 2 of Board of Directors passed on 17th August, 1977 in relation to M/s Vijay Construction Co. fixing rates for poles. Ex. M-9 is also copy of such resolution relating to M/s Vijay Construction Co. regarding rate. Ex. M-9 to M-42 are the bills paid on account of labour charges to M/s Deepak Construction Co. and M/s Vijay Construction Co. the Contractor Ex. M-47 is a statement of labour charges paid to M/s Deepak Construction Co. Ex. M-48 is a statement of E.S.I. payment which was debited to M/s Deepak Construction Co. Ex. M-2 is a Auditor's report together with the balance-sheet for the period ending on 31st July, 1976. The balance-sheet also witnesses the contract charges. Ex. M-3 is another audit report together with the balance-sheet for the year ending on 31st July, 1975. Ex. M-4 is another audit report with another balance-sheet for the year ending on 31st July, 1974. All these documents proved that these were contractor's of the management and the payment had been made by the management to the contractors. It has also been proved that M/s Deepak Construction Co. and M/s Vijay Construction Co. were the contractors of the management. It has also been proved that these workmen were the employees of M/s Deepak Construction Co. or M/s Vijay Construction Co. and not of the management. Even WW-4 has deposed against the workmen although he was a clerk of the management but the workman had summoned him as their witness. The management have also placed on file the copies of partnership deed of M/s Vijay Construction Co. as well as of M/s Deepak Construction Co. Ex. M-49 is a closure notice by M/s Deepak Construction Co. which bears the names of these workmen. Exhibit M-50 is a closure notice by M/s Vijay Construction Co. Ex. M-1 is a list of claimants employed by M/s Deepak Construction Co. with the place of working. It also mentions the names of three workmen employed by M/s Vijay Construction Co.

The learned representative for the workman argued that in E.S.I. card Ex. W-1 and Ex. W-2A the employer's code number is described as 6604 which was allotted to the management and their six workmen may be considered as the workmen of the management and they have been victimised for their trade union activities. He further drew my attention to the section 17 of the Contract Labour Regulation and Abolition Act, 1970. He also drew my attention to Ex. M-3 but Ex. M-3 is a letter from M/s Deepak Construction Co. to the Conciliation Officer giving the names of its employees in Ex. M-3/A. He also drew my attention to section 103 of the Factories Act. The representative for the management argued on section 38, section 2(9), sub-section (33) and section 17 of the E.S.I. Act. He further argued that omission on the part of the workman to produce monthly returns, six monthly returns under the E.S.I. Act goes against them. He further argued that rules under the Contract Act (Regulation and Abolition) had been framed in the year 1976 and therefore, the question of complying these rules do not arise, as the management as well as Contractor closed their work prior to that.

When the rules under the Contract Labour (Regulation and Abolition) Act, 1970 have been framed in the year 1976, the question of making the application under that Act and rules by the management or the Contractors prior to that does not arise. Section 2(9) of the E.S.I. Act does not help the workman. Section 13 of the E.S.I. Act is irrelevant. Sub-section 2(13) defines the immediate employer. Section 2(17) defines the principal employer. Section 38 of E.S.I. Act provides for the Insurance of all employees and section 39 provides for the Payment of Contribution.

Nothing helps the workman in this case. Ex. W-X/A which is a letter from the management to the E.S.I., Dispensary asking him to issue identify card to Shri Shiv Parshad. This also does not help the workman. It is an admitted fact that the management was remitting the employee's contribution to the E.S.I. and was debiting it to the Contractor and their act of debiting this amount to the contractor has been proved,—vide documentary evidence which is authentic, reliable and dependable, it was the duty of the management, as per law, to pay contribution of the employees of their contractors. They had to discharge their duty and they had discharged their duties by this act of theirs, the workmen do not become the employees of the management. As a result of my discussions of the oral and, documentary voluminous evidence, I decide issue No. 1 against the workmen.

Issue No. 2.—The reference is not belated there is not an iota of evidence that it is politically motivated. More over if a thing is according to law, the political motive loses its importance. I, therefore, decide issue No. 2 against the management.

Issue No. 3.—As issue No. 1 has been proved and issue No. 2 had not been proved, hence issue No. 3 comprising the dispute is not necessary to be decided.

As a result, I hold that the workmen were not the employees of the management and the question of termination of their services by the management does not arise. As a result of my findings on the issues, I

answer the reference and give my award that these workmen, whose names are given in the order of reference, were not the employees of the management at any relevant period and the management has not terminated their services, hence the question of justifiability of the termination of their services does not arise.

The workmen were not the employees of the management. The management could not and did not terminate the services of these workmen, they are not entitled to any relief. Relation of employer and employee between these workmen and the management has not been found to have existed.

Dated, the 20th October, 1978.

NATHU RAM SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 2933, dated the 6th November, 1978

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act.

NATHU RAM SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

LIST OF THE WORKERS

1. Shri Sham Lal, son of Jugar Kurmi.
2. Shri Ghisa Singh, son of Dugar Singh.
3. Shri Sarju Kesri, son of Baldev Saha Kesri.
4. Shri Israil Khan, son of Bakkar Mullah.
5. Shri Kallu Mohd., son of Sudershan.
6. Shri Hari Shankar, son of Sudershan.
7. Shri Kunj Bihari, son of Badri Parshad.
8. Shri Ram Narain Singh, son of Ram Partap Singh.
9. Shri Sadhu Ram, son of Shri Kalu Kurmi.
10. Shri Ram Gahon, son of Shri Khamu Chaudhary.
11. Shri Mohinder Singh, son of Shri Jagdhar Singh.
12. Shri Shiv Parshad Patel, son of Shri Raji Man.
13. Shri Shiv Shankar Soni, son of Shri Phool Chand Soni.
14. Shri Nar Singh, son of Shri Jagdhar.
15. Shri Shatrughan Singh, son of Shri Ram Partap Singh.
16. Shri Ram Sarup, son of Shri Sohan.
17. Shri Batj Nath Parshad Gupta, son of Shri Kanshed Lal Gupta.
18. Shri Kallu Singh, son of Shri Moth Singh.
19. Shri Anil Kumar, son of Shri Bhogal Razak.
20. Shri Babu Lal, son of Shri Kankal.
21. Shri Parmeshwar Singh, son of Shri Jagdhar Singh.
22. Shri Ram Kirpal, son of Shri Siaram Singh.